

**AMENDMENT TO THE DRAWINGS**

Please substitute the attached drawing sheet as a replacement sheet.

Attachment: One (1) sheet of replacement drawings. Sheet 4/5.

### **Remarks**

This Amendment and Response is submitted in response to the office action mailed on June 2, 2006, which office action was made final. This communication is believed to be a full and complete response to that office action. Claims 19-53 were pending in the present application at the time the office action was issued. Claims 19-53 were rejected in the office action.

Claims 19-53 remain in the application. By the present amendment, claims 19, 25, 28, 36, 37, 42, 45, and 53 been amended. No claims have been canceled. No new claims have been submitted for entry.

Support for these amendments can be found in the original specification, and thus, no new matter has been added. Applicant reserves the right to pursue all original claims in this or other patent applications. Reconsideration and reexamination of the present application is respectfully requested in light of the foregoing amendments and in view of the following remarks, which establish that the pending claims are directed to allowable subject matter.

Because the present amendments (1) do not raise new issues requiring further consideration or search, (2) do not introduce new matter, (3) materially reduce the issues for appeal, and (4) place this application into better condition for allowance, entry is appropriate under 37 C.F.R. § 1.116, and is respectfully requested.

### **Priority**

The examiner noted that applicant's claim for priority is acknowledged but that applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119. Applicant hereby acknowledges his obligation to satisfy the statutory and rule requirements for perfecting his priority claim.

## **Drawings**

The drawings were objected to under 37 CFR 1.83(a) for failing to show "the curvilinear path of the reciprocating member" claimed. Applicant has added a schematic illustration of this claimed feature as Figure 4A and has amended the specification by adding a description of the added drawing and by referring to the added drawing in the description of the invention. Applicant believes that the original specification, particularly at paragraph 0047 of the published application, and drawings support applicant's added drawing as a response to the objection to the drawings.

## **Claim Objections**

The examiner indicated that claims 19-53 were objected to because "the second and third directions of travel are the same." The examiner further remarked that "[r]eferring to the two directions as separate elements creates an assumption that they are in fact two separate directions." Applicant first notes that claims 37-53 do not directly or by dependency contain the phrase "third direction of travel." Therefore, applicant believes that the objection is inapplicable to claims 37-53.

Applicant traverses the objection in general and respectfully disagrees with the opinion that has been stated as the basis for the objection. Applicant's delineation of directions is associated with and in furtherance of defining distinct transport elements of the apparatus. Each transport element is defined by multiple descriptors including velocity descriptors and direction descriptors. As used to define each transport, no assumptions are necessary or relevant because each direction descriptor ("second direction of travel," "third direction of travel") is further defined by another descriptor, namely, "substantially perpendicular to the first direction of travel." Applicant respectfully

believes that the terminology used clearly defines the elements claimed as required and allowed by US patent law. Applicant is not aware of the relevance in patent law of the assumption denoted in the objection.

#### **Claim Rejections – 35 U.S.C. § 112**

Claims 19-57 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Claims 19-53 are pending in the application. Thus applicant has assumed that the rejection of claims "19-57" is meant to apply to claims "19-53" instead. Applicant requests that he be informed if this assumption is incorrect.

Limitations in claims 19 and 37 were indicated to be too far from the term "receiving." The examiner also noted that "language suggests that only one packaging material product is acted upon by the accelerator." Applicant has amended claims 19 and 37 in this paper to move the location of the limitations closer to the term "receiving." The amendments to claims 19 and 37 also clarify that the accelerator acts upon the continuous sequence of ones of the packaging material.

Claims 19 and 37 were the only claims specifically mentioned in the rejection under 35 USC 112. Applicant has assumed that all claims other than claims 19 and 37, that is, claims 20-36 and claims 38-53, were rejected because they depend upon claims 19 and 37. Thus applicant has addressed the rejection only with respect to claims 19 and 37. Applicant respectfully requests that he be informed if his assumption is incorrect. Applicant believes that the amendment of claims 19 and 37 obviate the two respective stated grounds for the rejection.

**Introduction to Remarks Pertaining to Claim Rejections under 35 U.S.C. § 102(b)  
and 35 U.S.C. § 103(a).**

Applicant traverses the rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a). One reason for traversal that is applicable to each rejection is that the primary reference that has been used in all of the rejections lacks at least one necessary element of applicant's invention. That primary reference is US Patent 3,848,519 to Ganz. The primary element that is missing from Ganz is a packaging material accelerator as claimed by applicant. Although the office action has identified a feature in Ganz that the office action refers to as a packaging material accelerator, that feature in Ganz lacks the claimed characteristics of applicant's packaging material accelerator. Thus every element of the invention is not disclosed by Ganz as a single reference. Likewise, when Ganz is used as a primary reference and combined with other references that do not disclose a packaging material accelerator, the combination cited does not disclose every element of the invention claimed.

**Claim Rejections – 35 U.S.C. § 102(b)**

Claims 19-24, 26, 28-29, 31-33, 37-41, 43, 45-46, and 48-50 were rejected under 35 U.S.C. 102(b) as anticipated by Ganz (US 3,848,519). Applicant respectfully traverses this rejection because Ganz lacks one of the essential elements of applicant's invention, namely, a packaging material accelerator. Therefore, every element of the invention as claimed is not disclosed by the prior art. Ganz fails to disclose additional elements as noted and discussed below. "To anticipate a claim, the reference must teach every element of the claim." MPEP § 2131.

The rejection under 35 U.S.C. 102(b) is contained in section 7 of the office action. Applicant experienced difficulty in responding to the various statements made as

reasons for rejection because many of the statements were not directed to any particular claim of applicant's application. Nevertheless, applicant has attempted to make this paper a full and complete response to every ground for rejection in the office action.

The second paragraph of section 7 of the office action states in part: "Ganz discloses ... packaging machine accelerators 28L and 28R adapted and synchronized to receive the individual packaging materials from conveyor 14 ...." This statement is not directed toward any particular claim. But because the packaging material accelerator is an element of independent claims 19 and 37, and all other claims depend upon either claim 19 or 37, applicant will discuss the ground for rejection in the context of these two claims. Independent claims 19 and 37 define a packaging material accelerator adapted for accelerating the packaging material. Ganz does not disclose such an element. Features disclosed in Ganz denoted by numerals 28R and 28L have been denoted "packaging material accelerators," but these elements do not in fact possess the characteristic of being adapted to accelerate. Further, the office action does not purport that the 28R and 28L elements possess such characteristic. The office action states: "packaging material accelerators 28L and 28R adapted and synchronized to receive the individual materials from conveyor 14 and place over array of bottles b on conveyor 12." The office action does not purport that Ganz discloses the characteristic of "accelerating," and, in fact, this characteristic is not disclosed in Ganz. The arguments stated here with respect to claims 19 and 37 are also applicable to all other claim rejections under 35 U.S.C. 102(b) because all dependent claims depend upon one or the other of these two dependent claims. For the reasons stated above, Ganz does not disclose every element of the invention as claimed.

In addition to the traversals and arguments stated above, applicant hereby addresses some of the other grounds for rejection stated in the second paragraph of section 7 that cited rejection under 35 C.F.R. 102(b).

- "Ganz discloses ... compression mechanism 106; ...." Applicant has assumed that this statement is directed to dependent claims 31 and 48 that claim "a compression mechanism." Applicant again respectfully notes that Ganz does not disclose a packaging machine accelerator. Therefore, Ganz lacks at least one element necessary for application thereof to claims 31 and 48.
- "Ganz discloses ... control system/drive mechanism that synchronizes the conveyors; see figure 1." Applicant has assumed that this statement is directed to dependent claims 32 and 49, which claim "a control system for effecting the synchronization of said packaging material conveyor, said packaging material accelerator and the article conveyor." If so, applicant respectfully notes that he is not able to discern from the specification or figure 1 of Ganz which features are purported to disclose applicant's control system. In addition, applicant again respectfully notes that Ganz lacks a packaging machine accelerator. Thus, for these reasons, Ganz does not disclose every element of invention as claimed. Applicant is unable to discern if the statement at the beginning of this bullet point is meant to be directed to claims other than claims 32 and 49.
- "The packaging materials have cells for holding articles b; see figure 15." Applicant is uncertain as to which claims this statement is directed.

The first sentence of the third paragraph of section 7 reads:

"The process is continuous therefore erecting elements 30 disposed adjacent conveyor 14 are adapted for erecting cells during packaging material conveyance by packaging material conveyor 14."

The office action does not indicate to which claim or claims this statement is directed. Applicant has assumed that this statement is directed to dependent claim 20 and independent claim 37 because claims 20 and 37 introduce an erecting mechanism. It is assumed that the reference in the office action to "erecting elements 30" is meant to allege anticipation of applicant's erecting mechanism. Applicant respectfully notes that claims 20 (through its dependence on claim 19) and 37 both lack the requisite element of a packaging material accelerator. And, in addition, the erecting mechanism has erecting elements disposed adjacent the packaging material conveyor. The packaging material accelerator is disposed to receive the packaging material from the packaging material conveyor. As claimed, the packaging material accelerator is disposed to follow the packaging material conveyor, and the erecting mechanism is disposed to act upon the packaging material as it is moved along by the packaging material conveyor. The office action has denoted Ganz's "assemblies" 28L and 28R as packaging material accelerators, but, in addition, refers to Ganz's gripper heads (also referred to in Ganz as "vacuum heads," "vacuum cup heads," "vacuum gripper heads" and "vacuum cup gripper heads") 30 as erecting elements. The gripper heads 30 are a part of the assemblies 28L and 28R. Thus the gripper heads 30 are stated to be the equivalent of two elements (namely, the packaging material accelerator and the erecting mechanism) that are distinctly claimed in scope, structure and operation by the applicant. Therefore, Ganz does not disclose at least one element of the invention as claimed. And thus, again, Ganz does not disclose every feature of the invention as claimed.



The second sentence of the third paragraph of section 7 reads: "Erecting elements include reciprocating element 110 which engages portion km of the packaging and travels on a curvilinear path." As applicant has stated above with respect to Ganz's element 30, Ganz element 110 is likewise a part of the assemblies 28L and 28R. Thus the office action again refers to an element in Ganz that is stated to be the equivalent of two distinct elements (that is, the accelerator and the erecting mechanism) that are distinctly claimed in scope, structure and operation in the present invention. In addition, what the office action cites as "reciprocating element 110" is in fact described in Ganz as a "horizontally disposed leg 110." The leg 110 is formed and disposed to help confine the handle portion of a carton that is being erected. Please see Ganz, column 6, lines 36-52. So, in fact, Ganz element 110 is not constructed or disposed to serve as an erecting element that is claimed by applicant. Thus, again, Ganz does not disclose every element of the invention as claimed.

The fourth paragraph of section 7 of the office action noted: "Regarding claims 26 and 43, packaging material conveyor 14 is positioned in an overlapping configuration with packaging material accelerator 28." Applicant again respectfully notes that Ganz lacks a packaging material accelerator. As previously detailed, the Ganz elements denoted by the numerals 28L and 28R do not disclose applicant's packaging material accelerator.

The first sentence of the fifth paragraph of section 7 of the office action stated: "Regarding claims 28 and 45, note that while features of an apparatus may be recited either structurally or functionally, claims directed towards an apparatus must be distinguished from the prior art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473-78, 44 USPQ2d 1429-32 (Fed.Cir. 1997) and *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed.Cir.

1990)." Applicant is unable to find support in *Schreiber* or *Hewlett-Packard Co. v. Bausch & Lomb Inc.* for the assertion made in the second part of the above-quoted sentence that reads "...claims directed towards an apparatus must be distinguished from the prior art in terms of structure rather than function." In addition, claims 28 and 45 are not functional claims. Claims 28 and 45 claim a packaging material accelerator that accelerates the packaging material to a third velocity that is approximately 3.25 to 5 times greater than the second velocity (that is, the velocity of the packaging material conveyor). Applicant respectfully notes that the limitations of claims 28 and 45 are in fact further limitations of the elements claimed in claims 19 and 37, respectively. The limitations claimed in claims 28 and 45 further define characteristics of the packaging material accelerator. Applicant has amended claims 28 and 45 to include some of the language from respective claims 19 and 37 that define the packaging material accelerator to further emphasize the limitation of claims 28 and 45. Thus applicant has traversed the above-stated ground for rejection and has offered an amendment to more clearly define the subject matter of the two dependent claims.

The second sentence of the fifth paragraph of section 7 of the office action stated: "The velocities specified are more appropriate for a process claim." No legal support has been cited for this statement, and, applicant respectfully notes, this statement does not appear to be a proper ground for rejection under 35 U.S.C. 102(b).

Further with respect to claims 28 and 45, the fifth paragraph of section 7 of the office action indicated: "The examiner takes the position that the separate assemblies of the invention to Ganz are fully capable of being run at different velocities if desired." Applicant respectfully notes that Ganz does not disclose or imply the characteristic of any assembly running at a separate speed from another assembly. Ganz does not indicate that it is either necessary or possible for the parts of the apparatus disclosed

therein to run at different speeds, or, more specifically, to provide the acceleration provided by applicant's apparatus. It is not enough that the characteristic claimed by applicant may be present in the prior art. In addition, applicant also notes that each of the "gripping and opening assemblies 28L and 28R" are formed of multiple constituent parts and in such a manner that makes it extremely unlikely that the assemblies possess the same characteristics as applicant's accelerator. Each assembly 28L, 28R has a single chain 34 and drive mechanism that carries multiple elements for performing multiple functions, several of which appear to require synchronization with Ganz elements that are not a part of the gripping and opening assemblies. This seems to militate against the assemblies possessing accelerating characteristics. The Ganz apparatus appears to require a synchronized hand-off of a carton from the conveyor assembly 14 to opposing sets of gripper heads 30. As the chains 34 move the respective gripper heads 30 along a designated path, cam assemblies are engaged to cause a motion in the gripper heads 30 that erects the cartons. Each gripper head 30 has mounted thereon a pair of angle members 107 for gripping and guiding the handle as it is gripped by the vacuum gripper heads. Each chain appears to have multiple sets (four are illustrated in the Ganz drawings) of gripper heads 30. Sets of pusher arms 102, 103 are also attached to each chain 34 and are associated with each respective gripper head 30. The pusher arms 102, 103 engage the handle of the carrier as the carrier is released by the gripper heads 30 to seat the carrier onto a bottle assembly. Multiple sprockets and gears drive each chain. It would seem that the interaction required between the bottle conveyor 12, the conveyor assembly 14 and the gripping and opening assemblies 28L and 28R, and between the many constituent parts that form the gripping and opening assemblies 28L and 28R, would make acceleration of a component of the gripping and opening assemblies extremely difficult. Or, if

acceleration was possible or a necessary part of the characteristics of the gripping and opening assembly 28L, 28R, then that characteristic would be disclosed and described.

Applicant respectfully notes the following with respect to applicant's above response with respect to the rejection under 35 U.S.C. 102(b). Applicant's intent is to respond to each and every ground for rejection in the office action; however, the office action does not specifically denote to which claims all of the bases for the 102 rejection apply. Specific reasons for the 102(b) rejection are denoted only for claims 26 and 43, and claims 28 and 45. Therefore, applicant has responded to the broad bases cited for rejection by focusing on the independent claims (claims 19 and 37), and, further, has responded to the bases for rejection as specifically denoted for claims 26, 28, 43 and 45. Applicant has specifically distinguished claims 19 and 37 because they are included in the recitation of claims rejected under 102(b) in the office action and because they are the independent claims in the application. Applicant has attempted to respond to other stated grounds for rejection based upon applicant's assumptions as to which claims the various statements are directed. Applicant believes that his response in this manner is as full and complete as is possible because additional grounds have not been recited for rejection of dependent claims 21-24, 29, 31-33, 38-41, 46, and 48-50. These claims depend upon independent claims 19 and 37, and applicant has traversed and responded to the bases for rejection as applied to claims 19 and 37. If Ganz lacks at least one element necessary to support a rejection of independent claims 19 and 37 under 35 C.F.R. 102(b), then Ganz cannot support a rejection of claims depending upon claims 19 and 37 on grounds and/or references that still do not disclose the element missing from the independent claims.

Applicant once again reinforces that Ganz does not disclose an element with an accelerating characteristic. Furthermore, the characteristic of acceleration is not

inherent in the structure or function of the Ganz apparatus. And, therefore, at least because of the lack of the accelerating characteristic, every element of the invention as claimed is not disclosed by Ganz.

**Claim Rejections – 35 U.S.C. § 103**

Claims 25 and 42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Ford (US 5,626,002). Applicant respectfully traverses this rejection for several reasons. First, for the reasons stated above with respect to the rejection under 35 U.S.C. 102(b), which reasons and arguments are hereby incorporated by reference, Ganz is not a suitable primary reference for a rejection under 103(a) because Ganz lacks the element of a packaging material accelerator. Thus the combination of a secondary reference with Ganz will not disclose every element of the claimed invention.

Another reason that applicant traverses the rejection of claims 25 and 42 is that the combined references of Ganz and Ford do not disclose applicant's teachings claimed in claims 25 and 42. Claims 25 and 42 are directed to inclusion of an adhesive mechanism adapted for applying an adhesive to the packaging material during erection of the cells. Ganz discloses an apparatus for erecting a collapsed carrier having preformed cells. The carrier used in the description of the Ganz apparatus has a bottom closure formed of complementary panels to be joined by engagement of tabs with complementary receiving apertures. Ford discloses applying adhesive to complementary bottom closure panels of a basket-style carrier to form the bottom wall of the carrier. Ford does not disclose or suggest use of an adhesive mechanism in the erection of cells of packaging material. Thus combining Ganz with Ford only discloses an apparatus that erects a basket-style carrier with preformed cells and then forms a

bottom wall thereof by applying an adhesive to complementary bottom wall panels. This is not an anticipation of the invention claimed by applicant in claims 25 and 42. In addition, there is nothing in either Ganz or Ford to suggest that the two should be combined to anticipate applicant's adhesive mechanism adapted for applying an adhesive to the packaging material during erection of the cells. And, lastly, Ganz's apparatus for erecting a basket carrier having preformed cells teaches away from applicant's claimed element. Similarly, Ford's machine for applying adhesive to close bottom panels of a preformed basket carrier erected from collapsed condition teaches away from applicant's invention.

Applicant has amended claims 25 and 42 by substituting in place of the term "erecting members" the term —erecting mechanism—. This amendment has not been made in response to the rejection, but rather to more precisely claim applicant's adhesive mechanism element.

Claims 27, 30, 44, and 47 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519). Claims 27 and 44 are directed to applicant's packaging material conveyor having opposing pairs of endless conveyor chains perpendicularly disposed with respect to one another adapted to engage the packaging material in both a transverse and a longitudinal plane. The office action itself is nonspecific and unclear, but it is assumed that it is with respect to claims 27 and 44 that the office action states: "Ganz does not directly disclose the packaging material conveyor with two opposing endless chains but rather only one carrying a series of lugs 20 for engaging the packaging material. However, it would have been obvious to one of ordinary skill in the art to provide two endless chains (one for each tooth in lug 20) since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art." Once again, applicant notes that Ganz is inapplicable as a

basis for a rejection under 103(a) because it lacks applicant's element of a packaging material accelerator. In addition, the office action does not provide an indication as to why it would have been obvious to derive applicant's features claimed in claims 27 and 44 from Ganz. The suggestion or motivation necessary to make the modification to Ganz is not indicated. Although the office action states that "it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art," no case or other authority has been cited for this proposition. Lastly, "two endless chains (one for each tooth in lug 20)" is not the feature claimed by applicant in claims 27 and 44. Instead, applicant has claimed "opposing pairs of endless conveyor chains perpendicularly disposed with respect to one another adapted to engage the packaging material in both a transverse and a longitudinal plane."

Claims 30 and 47 are directed to the packaging material accelerator including at least one endless belt having a working reach terminating proximate the article conveyor disposed for intersection with top regions of the articles. The office action itself is nonspecific and unclear, but it is assumed that it is with respect to claims 30 and 47 that the office action states: "Ganz discloses endless chains 34 having a working reach terminating proximate article conveyor 12; see figure 1." Once again, applicant notes that Ganz is inapplicable as a basis for a rejection under 103(a) because it lacks applicant's element of a packaging material accelerator. And, therefore, every element of the invention as claimed is not disclosed by the prior art.

Ganz's lack of a packaging material accelerator is even more critical in this instance because it is the packaging material accelerator that is further defined by the limitations of claims 30 and 47. If Ganz lacks a packaging material accelerator, there can be no suggestion or motivation to modify an element that is not present. In addition, the office action does not claim that it would have been obvious to provide (and Ganz in

fact does not in any way suggest or provide motivation for) an endless chain or belt "disposed for intersection with the top regions of the articles."

-*Official Notice* - The office action further states: "The examiner takes Official Notice that endless belts and roller/pulleys are well known substitutes for endless chains. It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the endless chains of Ganz with endless belts for carrying the engaging elements of the packaging material accelerator." It is applicant's understanding that "[a]ny rejection based upon assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied." MPEP 2144.03(E). Applicant believes that the application of Official Notice has not been judiciously applied and is particularly inappropriate in this instance wherein the primary reference cited (to which Official Notice is applied) lacks at least one key element of the claimed invention and, in addition, that key element is the point of novelty to which the principle of "Official Notice" is applied. Furthermore, the primary reference that is cited discloses structure that not only lacks a key element, but the element 28L and 28R that has been cited as the equivalent structure is so different that it teaches away from applicant's invention. And the substitution contended seems contrary to design principles in the field of art. Ganz's "gripping and opening assemblies 28L and 28R" is a complex mechanism formed of multiple constituent parts necessary for its operation including multiple sets of gripper heads 30, pusher arms 102, 103, and angle members 107 that are attached to and dependent upon each chain 34, as well as multiple sprockets, other chains and gear drives that drive the chains 34. It would seem that actual or contemplated substitution of belts for Ganz's chains 34 would be extremely unlikely in any circumstance or under any line of reasoning for any purpose. For these reasons, applicant respectfully traverses



the application of "Official Notice." Applicant does not believe that it would be common knowledge or well-known in the art to substitute endless belts and roller/pulleys for Ganz's chains 34. In fact, it appears that substitution of endless belts and roller/pulleys for Ganz's chains 34 would make the Ganz assemblies 28I, 28R and overall apparatus inoperable.

Claims 34-36 and 51-53 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ganz (US 3,848,519) in view of Buckingham *et al.* (US 4,237,676). Applicant traverses this rejection. Applicant, for the reasons previously enumerated, which are hereby incorporated by reference, again respectfully notes that Ganz does not disclose a packaging machine accelerator. Therefore, as a primary reference, Ganz lacks at least one element necessary for application thereof to claims 34-36 and 51-53. And, therefore, every element of the invention as claimed is not disclosed by the prior art.

Another reason for traversal is that the office action does not clearly enumerate the bases of the rejection as required and set forth by MPEP 706.02(j). The office action states that "Ganz does not *directly* (emphasis added) disclose a packaging material detector or an article array position detector...." Applicant respectfully notes that Ganz also does not disclose these two elements *indirectly*. Applicant also notes that reference to an element in Buckingham *et al.* that is implied to be comparable to the packaging material detector is not clearly delineated so as to enable applicant to respond in depth. The office action states that "in a similar automated packaging device Buckingham *et al.* disclose packaging arrays of bottles using a control system comprising packaging detector/photocell P1; detector head/array detector (not shown); see column 10 lines 51+." Applicant is unable to determine the location or context of the reference to "packaging material detector/photocell P1" in Buckingham, *et al.* that may have been

intended. Applicant has noted a feature in Fig. 8 of Buckingham et al. designated as "P1." Applicant has noted the following at column 7, lines 11-14 of Buckingham: "A photocell P1 is mounted above the inlet side of conveyor 25 to insure that the individual sleeves are fed successively onto the spacing conveyor as shown in Fig. 8." Applicant's claims 34-36 and 51-53 are directed to a control system that includes "at least one packaging material detector for determining positions of the article arrays." The photocell P1 of Buckingham et al. is not described in a manner wherein it appears comparable to or appears to suggest applicant's packaging material detector for determining positions of the packaging material and then providing input to a central processor for controlling a controller.

The "detector head" of Buckingham et al. (which is not illustrated in the patent) is not described or illustrated in a manner wherein it appears to be comparable to or suggests applicant's article array position detector for determine positions of the article arrays. Buckingham et al. states: "A detector head ... is located at the grouping point 16 ... to be certain that a group 13 of six filled and capped bottles 11 is present in proper alignment for wrapping." Buckingham et al. does not indicate or suggest a detector for determining positions of article arrays and providing input to a central processor for operating a controller.

In addition to a packaging material detector and an article array detector, claims 34-36 and 51-53 also delineate the elements of a "controller for controlling at least one of said packaging material conveyor, said packaging material accelerator and said article conveyor" and "a central processor adapted for receiving input parameters ... and for operating said ... controller..." The office action states that the photocell and detector head of Buckingham et al. "are run by a control system/controller as are the conveyors

of Ganz"; however, the controllers of Ganz and Buckingham et al. are not described or delineated.

Neither Ganz nor Buckingham et al. disclose a "central processor," as claimed in claims 34-36 and 51-53. The office action stated that it is moot whether or not Buckingham et al. disclose a central processor "due to Applicant's previous admission that central processors and input means are well known devices in this environment...." Applicant respectfully notes that even if for the sake of argument it is assumed that there was an admission based upon applicant's failure to traverse, such an admission would have pertained to claim 13 which is no longer present in the case. MPEP 706.07(a). And, in addition, what was argued in the past office action to be common knowledge or well-known in the art was applied to the Greenwell et al. reference that was cited in the office action as the basis for rejecting claim 13. Neither claim 13 nor Greenwell et al. is present in the case. Nor was claim 13 or Greenwell et al. present in the case at the time the present office action was issued. Therefore, applicant respectfully propounds that he has not made an admission with respect to central processors and input means as the office action has alleged.

#### **Amendments for Clarity and Consistency**

In addition to the amendments described above, for the purposes of clarity and consistency, applicant has amended claims 19 and 37 to make minor grammatical changes in punctuation and placement of articles. In addition, also for the purposes of clarity and consistency, applicant has rearranged language in claims 36 and 53. These changes do not add new matter, are supported by the original disclosure and are believed to place the application in better condition for allowance.

**Final Rejection Premature**

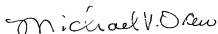
Applicant believes that making the office action final is premature. Applicant respectfully submits that because new references have been cited in the case, applicant has not had an opportunity to have a full and fair hearing on the merits. Applicant respectfully requests that the finality of the office action issue on June 2, 2006 (06/02/2006), be withdrawn.

**Conclusion**

Applicant believes that the arguments and amendments proffered above have obviated the examiner's previous bases for rejection and distinguish applicant's invention over the prior art. Therefore, applicant respectfully requests approval and acceptance of the claims and that the case be passed to issuance.

No additional fees are believed to be due at this time. If, however, a fee is due, the Commissioner is requested to charge such fee, or credit any overpayment to Deposit Account No. 50-3447.

Respectfully submitted,



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